

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ENPAC, LLC,

Plaintiff,

CASE NO. C11-37BHS

V.

CHASSIDY F. LUCAS and CB  
STORMWATER<sup>1</sup>,

## Defendants.

ORDER GRANTING  
STORMWATER'S MOTION  
TO SET ASIDE DEFAULT  
AND DENYING PLAINTIFF'S  
MOTION FOR JUDGMENT  
BY DEFAULT AS TO CB  
STORMWATER

This matter comes before the Court on Defendant CB Stormwater’s (“Stormwater”) motion to set aside default (Dkt. 40) and on Plaintiff Enpac, LLC’s (“Enpac”) motion for judgment by default (Dkt. 33). The Court has reviewed the briefs filed in support of and in opposition to the motions and the remainder of the file and hereby grants the motion to set aside default and denies Enpac’s motion as to Stormwater for the reasons stated herein.

## I. PROCEDURAL HISTORY

On May 31, 2011, Stormwater filed a motion to set aside default (Dkt. 40). On June 1, 2011, the Court granted Defendants' motion to set aside default as to Lucas. Dkt. 38. On June 8, 2011, Defendants filed a notice of appearance on behalf of Stormwater.

<sup>1</sup> While the motion was originally filed on behalf of CB Stormwater LLC, CB Stormwater has reorganized as a sole proprietorship.

1 Dkt. 41. For a more detailed discussion of the procedural history see the Court's prior  
2 order. Dkt. 38.

3 **II. DISCUSSION**

4 **A. Motion To Set Aside Default**

5 **1. Standing**

6 A business entity, except a sole proprietorship, must be represented by counsel.  
7 Local Rules W.D. Wash. GR 2(g)(4)(b); *see also Rowland v. California Men's Colony,*  
8 *Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993)(holding that artificial entities  
9 such as corporations, partnerships or associations may appear in the federal courts only  
10 through licensed counsel).

11 Here, in order to comply with this rule, Defendants filed a notice of appearance on  
12 behalf of Stormwater and indicated that the business is now registered as a sole  
13 proprietorship. Dkt. 41. Therefore, according to Local General Rule 2(g), Stormwater  
14 may proceed pro se, and the Court will now consider its motion to set aside default. Dkt.  
15 40.

16 **2. Rule 55(c) Analysis**

17 An entry of default may be set aside for good cause. Fed. R. Civ. P. 55 (c). "To  
18 determine good cause, a court must 'consider three factors: (1) whether the party seeking  
19 to set aside the default engaged in culpable conduct that led to the default; (2) whether it  
20 had no meritorious defense; or (3) whether reopening the default judgment would  
21 prejudice' the other party." *Id.* at 1091 (quoting *Franchise Holding II v. Huntington*  
22 *Rests. Group, Inc.*, 375 F.3d 922, 925-26 (9th Cir. 2004)).

23 As Stormwater is proceeding pro se, the Court may now consider its motion to set  
24 aside default (Dkt. 40) and Enpac's motion for default judgment (Dkt. 33) as it pertains to  
25 Stormwater. Accordingly, for the reasons set out in its prior order, the Court finds that all  
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1 three factors in the “good cause” analysis for setting aside a default under Rule 55(c)  
2 equally favor Stormwater. See Dkt. 38 at 3-6.

3 **B. Motion for Judgment by Default**

4 Judgment by default is appropriate only in extreme circumstances because a case  
5 should, whenever possible, be decided on the merits. *United States v. Signed Personal*  
6 *Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1089 (9th Cir. 2010).

7 Because the Court has set aside the default as to Stormwater, granting judgment  
8 by default would be improper. Therefore, the Court concludes that the motion for default  
9 judgment as to Stormwater should be denied.

10 **III. ORDER**

11 Therefore, it is hereby **ORDERED** that:

12 (1) Stormwater’s motion to set aside the default (Dkt. 40) against it is  
13 **GRANTED**; and  
14 (2) Enpac’s motion for default judgment (Dkt. 33) is **DENIED** without  
15 prejudice as to Stormwater.

16 DATED this 30th day of June, 2011.

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BENJAMIN H. SETTLE  
United States District Judge